IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.435 OF 2001

DIST. RAIGAD

1. Pandit Pandurang Shelke,)
2. Pundlik Vitthal Shelke,)
3. Tanaji Yeshwant Ombale,)
4. Rohidas Harishchandra Shelke)
5. Avinash Pandurang Shelke) .... Appellants
(Orig. Accused 1 to 5)

Versus

The State of Maharashtra)

(At the instance of Karjat Police)

Station, Dist. Raigad.)) ... Respondents

Mr. K.S. Patil for the appellants (A-1 to A-5).

Mr. P.S. Hingorani, A.P.P. for the respondent-State.

CORAM : SMT. RANJANA DESAI &
D.G. KARNIK, JJ.

DATE ON WHICH THE JUDGMENT RESERVED : 27TH APRIL, 2006.

DATE ON WHICH THE JUDGMENT PRONOUNCED : 4TH MAY, 2006.

JUDGMENT : (Per Smt. Ranjana Desai, J.)

1. The appellants are original accused 1 to 5 respectively. They were tried in the court of Additional Sessions Judge at Raigad in Sessions Case No.74 of 1999 along with seven others for offences punishable under sections 147, 148, 302 read with section 149 of the Indian Penal Code (for short, "the IPC"). By the impugned judgment and order, the learned Sessions Judge acquitted original accused 6 to 12. He convicted the present appellants under sections 147, 148, 302 read with section 149 of the IPC. For the offence punishable under section 302 read with section 149, they were sentenced to suffer life imprisonment and to pay a fine of Rs.500/- each, in default, to suffer further rigorous imprisonment for two months. For offence punishable under section 148 of the IPC, they were sentenced to suffer rigorous imprisonment for one year. For conviction under section 147 of the IPC, no separate sentence was awarded. The substantive sentences were ordered to run concurrently. Being aggrieved by the said judgment and order, the appellants have approached this court. For the sake of convenience, we shall refer to the appellants as "A-1 to A-5" respectively.

2. Since A-6 to A-12 have been acquitted, we shall discuss only

that part of the evidence, which is relevant to A-1 to A-5 and give the gist of the facts keeping this in mind. PW-1 Lahudas Bade is a resident of Savala, Karjat, Dist. Raigad. According to him, on 18/2/1999, he was proceeding to village Kondivade as he wanted to have a hair-cut. His cousin deceased Vasant Kharamare (for convenience, "the deceased") was also with him. They left for village Kondivade at about 8.15 a.m. from village Salpe. When they reached village Kondivade near the office of the Gram Panchayat at about 9.00 a.m., the accused came there. They encircled the deceased. A-1 and A-2 dealt chopper blows on the head and face of the deceased. A-3 assaulted on the back of the deceased with a battle axe. A-4 and A-5 dealt knife and gupti blows on the stomach, chest and neck of the deceased. The deceased fell down on the road. Blood was oozing from his injuries. PW-1 Lahudas started running towards village Salpe. He saw one person proceeding on scooter towards Karjat. He requested him to stop the scooter and told him that he wanted to approach the police station. That person was the police patil of village Kondivade. PW-1 Lahudas went with that person to the Karjat Police Station and lodged his complaint, which is at Ex-90. On the basis of this complaint, investigation was started. A-1 to A-3 were arrested on 23/2/1999 and A-4 and A-5 were arrested on 26/2/1999. After completion of the investigation, the accused came to be charged as aforesaid.

3. In support of its case, the prosecution examined as many as 13 witnesses. The prosecution examined two eye-witnesses. They are PW-1 Lahudas Bade and PW-2 Vaishali Bhalekar. PW-4 Ananta Gaikwad, the police patil was also examined. However, he did not support the prosecution. The prosecution examined PW-13 PSI Dyandeo Bhom, the Investigating Officer, who has given details of investigation. The prosecution examined PW-5 Jayaram Ghodvinde, PW-6 Gajanan Shelke, PW-7 Sharad Mali, PW-8 Harishchandra Mande, PW-9 Baban Sherekar and PW-10 Ketan Ghare, who are the panchas to various panchanamas. The prosecution examined PW-12 Dr. Balasaheb Jagdale, who had done the post-mortem on the deceased. The defence of the accused was one of denial. According to the accused, they were falsely implicated on account of political rivalry. After perusing the evidence on record, the learned Sessions Judge convicted A-1 to A-5 as aforesaid and, hence, this appeal.

4. We have heard Mr. Patil, the learned counsel appearing for the accused and Mr. Hingorani, the learned A.P.P. appearing for the respondent-State. With the assistance of the learned counsel, we have gone through the evidence and the record.

5. Mr. Patil contended that inasmuch as the learned Sessions

Judge has acquitted A-6 to A-12, he has disbelieved a substantial part of the prosecution case and, therefore, he was not justified in convicting A-1 to A-5 on the basis of part of the evidence. He submitted that the evidence of two eye-witnesses i.e. PW-1 Lahudas and PW-2 Vaishali does not inspire confidence. He submitted that PW-1 Lahudas claims that he went to the police station with PW-4 Ananta and since PW-4 Ananta has not supported the prosecution, the evidence of PW-1 Lahudas has also become unreliable. He submitted that PW-1 is the cousin of the deceased. He is, therefore, an interested witness. The prosecution ought to have examined independent witnesses. According to the learned counsel, it is risky to rely on the evidence of the interested witnesses for convicting the accused. Mr. Patil also contended that the evidence of child witness PW-2 Vaishali is replete with inconsistencies and, therefore, she should not have been believed. It is doubtful whether PW-2 Vaishali was there at all. The learned counsel contended that the learned Sessions Judge erred in relying on the discoveries allegedly made at the instance of the accused. He submitted that the evidence of pancha witnesses does not inspire confidence. He also pointed out that PW-4 Ananta, the police patil has turned hostile. Mr. Patil contended that whereas it is the case of the prosecution that A-3 had given a blow on the back of the deceased, the post-mortem notes do not indicate that there was any injury on the back of the deceased.

The learned counsel, therefore, submitted that the conviction and sentence of A-1 to A-5 must, therefore, be quashed and set aside.

6. As against this, Mr. Hingorani, the learned A.P.P. submitted that no interference is necessary with the impugned judgment and order. He submitted that the evidence of both the eye-witnesses is cogent and consistent. The incident is supposed to have taken place at about 9.00 a.m. to 9.15 a.m. in the morning and the FIR is lodged by PW-1 Lahudas at about 10.00 a.m. in the morning. Therefore, the FIR is lodged promptly. In the FIR, PW-1 Lahudas has mentioned the names of A-1 to A-5 and he has also ascribed a role to each of them. By and large, the evidence of PW-1 Lahudas and even PW-2 Vaishali is in consonance with the medical evidence. He submitted that the evidence of PW-1 Lahudas and PW-2 Vaishali inspires confidence. The learned A.P.P. contended that the learned Sessions Judge has, therefore, rightly convicted A-1 to A-5 on the basis of the evidence on record. He also submitted that the weapons of assault have been discovered at the instance of A-1 and A-3. As per the report of the chemical analyst, the weapons were found stained with human blood. Clothes of A-1 to A-5 were also blood stained. He, therefore, submitted that A-1 to A-5 have been rightly convicted and, no interference is necessary with the impugned order.

7. We have given our anxious consideration to the submissions advanced by the learned counsel. PW-1 Lahudas is the cousin of the deceased. On 18/2/1999, he and the deceased left for village Kondivade from village Salpe. He wanted to go to village Kondivade for having hair-cut. According to him, when they reached village Kondivade near the office of Gram Panchayat at about 9.00 a.m., all of a sudden A-1 to A-5 and five to six other persons came there and encircled the deceased. A-1 and A-2 assaulted the deceased on his head and face with choppers. A-3 had a battle axe. He dealt blow with the battle axe on the back of the deceased. A-4 and A-5 attacked on the stomach, chest and neck of the deceased with knife and sword stick. The deceased fell down on the side of the road. Blood was oozing from his injuries. PW-1 Lahudas started running towards the bus stop. Out of fear, while running, he turned back. He saw the accused assaulting the deceased. He then started running towards village Salpe. He saw five to six persons running after the deceased. He then started running towards the road for proceeding to the police station for lodging the complaint. At that time, he saw one person proceeding towards Karjat on the scooter. He requested that person to stop the scooter. He informed him about the incident. That person told him that he was the police patil of village Kondivade and he was also proceeding to the police station. Therefore, along with him PW-1 Lahudas went to Karjat Police

Station and lodged his complaint, which is at Ex-90. According to PW-1 Lahudas, the Police Sub- Inspector of the Karjat Police Station accompanied him to the spot of incident. Inquest panchanama was drawn. The investigation was started. He has given certain details of investigation. When weapons of assault were shown to him in the court, he identified them as being the same weapons used by A-1 to A-5 while attacking the deceased. He stated that there was a dispute in respect of election of the Gram Panchayat between the deceased and the accused. A-1 was the Surpanch but he had lost the election in the Panchayat and, therefore, the accused were annoyed with the deceased. The relations between the two were strained.

8. This witness has been cross-examined at length. However, the defence has not been able to elicit anything in his cross-examination from which it can be said that he is an unreliable witness. So far as the assault on the deceased is concerned, his version is consistent with the details which he has given in the FIR. In the cross-examination also, he is consistent. It was argued that though he has stated that he went to the police station with PW-4 Ananta, the police patil of Kondivade, PW-4 Ananta had not supported the prosecution and, therefore, to that extent PW-1 Lahudas cannot be believed. We find no substance in this submission. It is true that PW-4 Ananta has not supported the prosecution case. But, PW-13 PSI Bhom, the

investigating officer has clearly stated that on 18/2/1999 he was present at the Karjat Police Station and at about 10.00 a.m. the police patil of village Kondivade approached the police station along with PW-1 Lahudas. Therefore, PW-1 Lahudas' scase that he went to the police station along with PW-4 Ananta cannot be doubted. Moreover, it is supported by FIR (Ex-90/C). We find the evidence of PW-1 Lahudas to be cogent and credible. No doubt, he is related to the deceased but merely because he is an interested witness, his testimony cannot be discarded if it is found to be credible. Having read his evidence and the FIR lodged by him, we have no hesitation in placing implicit reliance on him. It is pertinent to note that the incident has taken place at about 9.00 a.m. in the morning and PW-1 Lahudas has lodged the FIR shortly thereafter at about 10.00 a.m. and in that FIR, he has given the names of A-1 to A-5. In the FIR, he has stated what weapons they were holding and he has also ascribed roles to them. Evidence of this witness cannot be disbelieved because he has stated that A-3 dealt a blow with battle axe on the back of the deceased and there is no injury on the back of the deceased. He has clearly stated in the evidence that he was frightened. He first ran towards the bus stop. Then he turned back and saw that the accused were still assaulting the deceased. He then started running towards village Salpe. He again saw five to six persons running after the deceased. Then he started running towards the road. In such

situation, it is quite possible that he made some mistakes in ascribing role to A-3. We do not find that this mistake is of any significance. His presence at the scene of offence is proved. His evidence by and large accords with the medical evidence. We find no difficulty in placing reliance on him.

9. The prosecution has examined PW-2 Vaishali, a child witness. It appears that at the relevant time, she was about 13 years old and was studying in 5th standard. She has stated that on 18/2/1999 she had gone to the school. At 9.00 a.m., the recess period started. According to her, they used to go to the temple for taking lunch. She had gone to the temple with her tiffin. She heard cries. She rushed to the Gram Panchayat office. She found that A-1 to A-5 were beating the deceased. According to her, they were assaulting the deceased with chopper, gupti, knife and battle axe. According to her, there were other persons with them. She has clearly stated that A-1 and A-2 were having choppers. A-3 was having a battle axe. A-4 had a knife and A-5 was armed with a gupti. When the said weapons were shown to her, she identified them as being the same weapons which were used by the accused.

10. She has been extensively cross-examined. However, in the cross-examination, she has stood firm. She has not deviated from

what she has stated in the examination-in-chief. Minor discrepancies in her evidence are not significant. Core of her evidence remains unaffected. It was pointed out in the cross-examination that she has stated that the recess period was from 9.30 a.m. to 10.00 a.m. but, she has immediately clarified that because it was the time of examination, the recess period would start from 9.00 a.m. Therefore, her presence at the scene of offence cannot be doubted. Her evidence is consistent with the evidence of PW-1 Lahudas. On the basis of the evidence of these two witnesses, it can be concluded that A-1 to A-5 attacked the deceased with deadly weapons and murdered him.

11. At this stage, it is also necessary to have a look at the evidence of PW-12 Dr. Jagdale, who had done the post-mortem on the deceased on 18/2/1999. PW-12 Jagdale found 19 external injuries on the deceased. There were nine serious cut wounds and ten stab wounds. The attack was made on vital parts of the body. According to PW-12 Dr. Jagdale, the cause of death was death due to haemorrhagic shock due to multiple stab injuries. When weapons of assault were shown to PW-12 Dr. Jagdale, he stated that the injuries found on the deceased were possible with the said weapons. The medical evidence, therefore, substantially corroborates the ocular evidence. PW-5 Jayaram is a pancha to panchanamas (Ex-98/C and Ex-100/C). They record that at the instance of A-1 chopper was

discovered. PW-5 Jayaram is also a pancha to panchanamas (Ex-99/C and Ex-101/C). These panchanamas indicate that at the instance of A-3, a battle axe was discovered. PW-5 Jayaram is also a pancha to panchanama (Ex-102/C) under which blood stained clothes of A-1 were discovered. He is also a pancha to panchanama (Ex-103/C) under which blood stained clothes of A-3 were discovered.

12. PW-6 Gajanan is a pancha to panchanamas (Ex-110/C and Ex-112/C) under which chopper was discovered at the instance of A-2. He is also a pancha to panchanamas (Ex-111/C and Ex-115/C). Under panchanama (Ex-111/C), a chopper was discovered at the instance of A-4 and under panchanama (Ex-115/C) blood stained clothes of A-2 were discovered at his instance. He is also a pancha to panchanama (Ex-114/C) under which blood stained clothes of A-4 were discovered at the instance of A-2.

13. PW-7 Sharad is a pancha to panchanamas (Ex-117/C and Ex-118/C) under which at the instance of A-5, a gupti was recovered. He is also a pancha to panchanama (Ex-119/C) under which blood stained clothes of A-5 were discovered. There is no reason to doubt the discovery evidence. The report of the chemical analyst indicates that the seized weapons and clothes of the accused were stained with human blood. This lends support to the prosecution case that A-1 to

A-5 attacked the deceased with deadly weapons and murdered him.

14. It was argued that the accused are falsely implicated. It was pointed out that PW-1 Lahudas has stated that there was enmity between the accused and the deceased on account of Gram Panchayat election. We are of the considered opinion that the evidence led by the prosecution in this case is cogent, consistent and of sterling quality. There is nothing to suggest that the accused have been falsely implicated. As rightly held by the learned Sessions Judge, the political rivalry between the two sides has provided the motive for this crime.

15. In the ultimate analysis, therefore, we have no hesitation in concluding that A-1 to A-5 have rightly been convicted. No interference is necessary with the impugned judgment and order. The appeal is dismissed.

(SMT. RANJANA DESAI, J.)

(D.G. KARNIK, J.)